



## A TAPESTRY OF TRADITION AND JUSTICE: THE INTERPLAY OF CUSTOMS AND LEGAL SYSTEMS IN INDIA

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### ABSTRACT

*India is an ever-present source of spirituality, materialistic literature, and historical civilisation. The word “Tradition” is derived from the Latin word “trader”, which in general terms means “to transmit,” “to hand over”, or “to give for safekeeping.” Traditions were formed historically and were passed down from our forebearers to our ancestors. In this paper, we will examine the significance of traditions in our society and how they have come to be recognised by the law. Nationwide, traditions differ from individual to individual, place to place, and community to community. Traditional values, beliefs, rules of conduct, identity, wisdom, and guidance, as well as respect and tolerance towards our own culture. The relation between law and social institutions is dynamic and interdependent. Laws are often created in reaction to the demands and difficulties that social institutions face. Law restricts discrimination while establishing standards and expectations for social institutions affecting how they operate and engage with people. Law influences social assistance programmes and family relations by defining marriage, inheritance, and child custody. Moreover, for traditions to gain legal recognition, they must be “ancient,” “immemorial”, and “reasonable.” Traditions provide a sense of continuity and belonging by connecting people to their cultural roots. They offer artistic expressions, social cohesiveness, and a sense of belonging, but they also face challenges as a result of modernity and evolving modern standards. The legally recognised traditions are not public rights; rather, they are exclusive to a certain group and are not meant for the personal enjoyment of a prominent cultural legacy.*

**Keywords:** Tradition and Law, Cultural Continuity, Legal Recognition of Customs, Society and Social Institutions.

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## INTRODUCTION

Salmond stated that, “Custom is an embodiment of those principles which have commanded themselves to the national conscience, as a principle of justice and public utility.” In the earlier ages, there was no king or any sovereign commanding the people; instead, people depended on each other and the natural resources. These natural resources helped people gain knowledge on how to live and form communities. As these communities formed, the rules and principles came up for their guidance and the origin of most of the social laws.

“Certain matters have passed into custom because of their utility. The fear of law, even religion, gives sanction to those rules which have both emanated from nature and have been approved by custom.” -Cicero.

The history of humankind is interconnected with that of the natural world. An extensive collection of ideas, methods, and information that are closely related to the utilisation of natural resources has developed. It made it possible for the majority communities to exist within the parameters of their immediate surroundings and shaped their spiritual and cultural identities. Therefore, the interaction between nature and culture must be considered in any endeavour to maintain nature and ecosystems.

Many laws are widely believed to have their roots in ancient custom. Customs have gained legal authority due to their widespread use and long-standing habit, which is also approved by the communities. Customs are the oldest sources of judicial means. For them to become a dominant source of information, a custom should include reasonableness, continuity in their usage, and most importantly, they should be ancient and time immemorial.

Our morals revolve around two strong elements, i.e., ethics and traditions. Ethics are concerned with proper human conduct. It deals with how a man should behave in society. An ideal human behaviour consists of a moral code which is rooted in the Natural school of thought. Moreover, it is said that ethics asserts itself from positive morality, which influences in maintaining public conscience. Dr Sethna stated, “Changes in the furnace of social evolution, social culture, and social development. What may be a rule of good morality at one time may be a bad moral today.” However, traditions cover the patchwork of faith, rituals, and human behaviour. In earlier times, kings were considered as immortal rulers who decided what was just and unjust in a society. The commands authorised by these kings, which are recognised and backed by

sanction, were followed by their followers as they were blinded by faith. Henceforth, law cannot gain legitimacy unless it is parallel to the moral values of the society.

## **LEGAL VALIDITY OF TRADITIONS**

A tradition originates from customs of society, and is undoubtedly an abstract type of law. The folks who lived during that period give it credence. The basis of this lies in the ease with which the average person may try to manage their everyday lives. The term tradition tells us about their belief and how they should conduct themselves in society. Individuals from different backgrounds, categories and communities must behave in a way that promotes their values and principles. Aspects of tradition include scientific and technological achievements which are distinct from cultures. Traditions include various forms of art, literature, music, philosophy and science. Individuals are showing interest in these fields and acknowledging the value and meaning of their tradition. Consequently, traditions have made a significant contribution to the improvement of people's quality of life.

The family is the most fundamental social unit for almost every Indian. There is a strong preference where Men are perceived at a greater status than women; boys are frequently bestowed with attention while girls receive less. Usually, the oldest male in the family - father, grandfather, uncle, etc. is the acknowledged head of the home, and the man's spouse controls what the women in the family are permitted to indulge in. Property and succession laws play an important role in gender justice jurisprudence. Hindu Law of Succession bears a direct pattern of the society. "Succession" is a process by which a person or persons become advantageously entitled to the property of a deceased. The process through which an individual derives designation in a property is called succession, and from whom this title and interest is bestowed is called a predecessor. Laws can differ by nation, and religion has its laws of inheritance, for example., Mohammedan law – the daughter will become the co-heir of the property, but under the Hindu Law of Succession, she will be held at default.

As expressed in the Laxminarayan case, the male member of the Mitakshara joint family, who inherits by birth in the joint property from a coparcenary. A Hindu coparcenary is a narrower body compared to a joint family because the female members of the family are not included in the coparcenary.

In the case of Smt. Ass Kaur Vs. Kartar Singh, it was held that custom is one of the three sources of Hindu Law. It was claimed that the traditional succession claims of daughters against

the father's assets, regarding inherited and non-ancestral lands, they inherit the father's owned assets rather than the collateral, even if they are within the scope of the fourth degree. The portion that a coparcener receives from the split of ancestral property is ancestral property for his male children. They are predisposed to be interested in it, whether they were born before or after the division. Such a part, however, is ancestral property only for his male offspring.

## **UNDERSTANDING THE IMPORTANCE OF HINDU LAWS IN MODERN AND PRESENT INDIA**

Hindu law originally was not the result of legislation but is considered to have a divine origin. It consists of several Sanskrit books which is regarded as authoritative throughout history. It is not "Law" as understood in today's world, but is a belief that has been practised from time immemorial. The term Dharma for Hindus covers the civil, religious, and moral system of law. Walker describes Hindu law as "A specimen of a class of religious laws followed not by the citizens of a particular state, but the adherents of a particular religion".

According to the Hindu Law Marriage Act, 1955 is a sacred tie, a tie which can never be broken. Smritikars states that marriage ties cannot be broken between husband and wife even after their death. It is not a mere contract but a sacred tie that cannot be untied. The Hindu Marriage Act is not concerned with religion but is a result of mutual consent rather than sacramental. This Act does not differentiate between the marriage of a maiden and the marriage of a widow. For a valid Hindu marriage, no ceremony is prescribed by the act. However, Sections 5 and 7 of the Hindu Marriage Act lay down certain conditions under which a marriage can be solemnised by the customary rights. This Marriage Act applies only to those persons who are Hindus, but does not apply to a person who neither resides in India nor has an Indian domicile.

Indian Young Lawyers' Association v. State of Kerala, or the famous Sabarimala case, more than half of the women population was not allowed to practice their Right to Religion under Article 25 of the Indian Constitution. Their custom stated that women between the ages of 10-50 years old would be restricted from entering the temple's premises on the biological grounds of menstruation, as it is an impure phenomenon which would affect the temple's purity. Rule 3(b) of the Kerala Hindu Places of Public Worship states that "Women at such time during which they are not by custom and usage allowed to enter a place of worship". The shrine in Kerala welcomed women of all ages after the ruling of the Supreme Court in 2018.

## TRIBAL CUSTOMARY LAWS IN INDIA

The Constitution of India states that all laws in effect before the commencement of the Constitution in 1950 must remain effective until revised, repealed or amended. The duty is to govern and guide society to maintain peace among the communities. It actively guides society towards peaceful coexistence. Fundamental rights protect rights such as equality and religious freedom, which reduces societal conflict. Directive Principles direct the government's efforts to develop policies that promote social welfare while also lowering inequality, which is a major source of conflict. The independent judiciary handles disputes in an unbiased manner, respecting the rule of law and preventing violence. Federalism is a system in which power is divided between the centre and the states, while recognising regional differences and encouraging unity.

Tribal communities have been practising their traditions and cultures since time immemorial and are reasonable and that is the reason why they have been given recognition by the Constitution. These indigenous communities, like Schedule tribes, have the right not to be displaced and disabled by any action which takes away their customary rights so that they can live with their dignity as per Article 21 of the Indian Constitution.

There are requirements in order for a custom or a tradition to gain legal recognition. They are supposed to be Ancient, Time Immemorial and Reasonable. If not, they would not be considered under the legal scope. An appropriate record should be made of the usage of a particular tradition in a community by its ancestors. These rights, if they come under the legal mechanism, are to be limited to a community and are not for the beneficial enjoyment of a dominant heritage but got personal benefit. In the case of Bhiker Vs. Shooram, settled in Nagpur, the Kumbhar community claimed that they have the right to use or take earth for the making of earthen pots.

The Toda are a nomadic tribe from the Nilgiri Hills in southern India. The Toda language is Dravidian, yet it is the most peculiar of that ethnic pool. The Toda tribe of Nilgiris, hailing from the southern part of India, lived there for centuries, protected by God Tokissay, related to buffalo-centric rituals are custodial, related to ownership.

The provision of Panchayat has been extended to the Scheduled Areas under the Panchayat Act, 1996 (PESA). Legislation enacted by states should protect local customs, beliefs, and traditional communal administration of resource techniques. Gram Sabha members from each

village should be listed on the panchayat electoral lists. Mining permits in scheduled areas must be granted with the Gram Sabha's authorisation. Panchayats are responsible for the planning and administration of small wetlands. High purchase of property and relocation owing to construction projects had caused widespread suffering in tribal groups residing in the Scheduled Areas. PESA was viewed as a cure for many of these vulnerabilities, to introduce a novel model of development in which indigenous groups in Scheduled Areas would determine the direction and interests of their development. It is unbelievable how few people are aware that the Gram Sabha is the body in charge and has jurisdiction over natural resources. In such cases, civil society groups are best positioned to act because they may launch campaigns to promote awareness of the PESA Act as well as its significance.

## **FOREST RIGHTS ACT**

There are different titles for the Scheduled Tribes and different Traditional Forest Dwellers (Recognition of Forest Rights) Act, which is often called the Tribal Land Act or the Forest Rights Act, India. It addresses the rights of forest-dwelling people, particularly Scheduled Tribes, over land and other resources that have been withheld from them throughout time due to the nation's enduring colonial-era forest regulations. The Forest Rights Act, which was approved in December 2006, largely addresses the unfairness brought about by colonial-era forest regulations and grants legal respect to the rights of traditional forest-dwelling people. Prior laws and regulations, such as the Forest Acts of 1865, 1894, and 1927, prohibited the local communities from making use of the resources.

An important piece of Indian law is the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, or FRA. Through the recognition of the rights of communities living in forests and relying on these lands for centuries, it seeks to remedy historical wrongs. The application of the FRA will be examined in this article, along with the reasons in favour of and against its efficacy. The FRA redresses the colonial heritage that classified forest inhabitants and indigenous people as intruders on their territories. Acknowledging their rights gives them tenure stability, promotes a feeling of ownership, and supports sustainable forest management techniques.

The Act gives communities rights to small-scale forest products, giving them the ability to manage and profit from resources they have long used. Better livelihoods and more revenue creation may result from this. Research indicates that state-controlled forests may not be as

successful as community-managed woods in preserving biodiversity. Acknowledging the rights of communities encourages sustainable behaviour and lessens deforestation.

Conflicts between communities and forest agencies are sometimes caused by unclear land rights. Clear ownership and usage rights may be established by effective FRA implementation, which will settle these problems. Recognising the rights of forest inhabitants and advancing sustainable forest management are two important goals of the FRA.

Empowering communities with legal literacy, claim preparation skills, and knowledge of their rights strengthens their ability to participate effectively in the FRA process. For a simpler implementation, it is imperative to simplify procedures, offer legal assistance, and guarantee prompt grievance redressal methods. Navigating obstacles and ensuring the Act's benefits reach those intended requires effective communication and coordination between government agencies, non-governmental organisations, and forest communities. The FRA is still an evolving project. Although some forest residents have surely benefited from it, overcoming implementation barriers is necessary to realise its full potential.

## **CUSTOMS INFLUENCING INTERNATIONAL LAW**

Municipal laws are profoundly affected by customs, which shape the legal system in a specific region. Customary laws comprise customs, traditions and behaviours that have developed over time within a community and are recognised as legal obligations. Courts at the municipal level may turn to long-standing traditions to maintain justice and equity in situations when statutory laws are non-responsive. This is the reason why the customary practices are widely accepted within a community. The main motive of customary laws is to preserve and protect the cultural identity of a particular community. Courts may give legal validation to certain customs if they comply with the principles of natural justice, morality, and public welfare. Customary law evolves to meet the needs of modern society and adapts itself to the changing societal norms. However, laws are to be interpreted in a way to continue their relevance in a dynamic society.

Nevertheless, custom plays an important role in shaping the formation of treaties among sovereign states. Creation of treaties involving independent states. Municipal laws and customary norms have an impact on international law. Customary international law can develop as a result of state behaviour that is persistent over time and the belief that these practices are mandated by law. For example, as ships pass from different countries and cross paths, a time-honoured custom unfolds; they raise their flags in a gesture of mutual respect.



This practice dates back to ancient times when the ships relied on visual signals for communication by using flags, torches, and even the possession of sails. This custom is followed even today as a matter of respect, greeting, safety and identification.

Given historical and political factors, there are numerous distinct laws governing the application of treaties at the municipal level. Although international conventions are formed by binding contracts between signatories, customary law emerges through the growth of state practice. It is common, but not necessarily required, for multiple states to act in a certain way because they think it is consistent with the law for a custom to arise. However, in the formation of treaties, the participating states may enact new legislation that would be enforceable upon them regardless of prior or contemporary customs. In India, states adopted a particular principle in the domestic legal system, which may lead to the formation or development of that particular principle at the international level.

India is a country rich in culture, traditions, heritage, belief and faith. Customary practices followed here are highly influential among its people and are duly noted in the constitutional provisions and statutory laws with the motive to protect human rights of an individual, at the same time follow principle of equity in the society. This practice of India is highly appreciated around the globe. Thus, Indian customs and cultural practices are influential in the formation of treaties. Indian negotiators might attempt to ensure that international agreements correspond to their national norms and values, which could have a direct effect on the provisions and terms of treaties. India practices peaceful dispute resolution through mediation, arbitration, and alternative dispute resolution mechanisms help in the development of international law in that particular region. Moreover, the legal framework of India concerning state accountability and responsibility may have implications for customary international law. India's approach to the question of sovereign liability for the actions of its agents or entities influences broader international legal norms. Indian customs concerning international law are closely associated with international legal developments and other governments' practices. International legal norms are shaped partially by India's involvement in international forums, diplomatic endeavours, and observance of customary practices. The dynamic interplay between international law and national customs highlights how interconnected the world legal system is.

The relationship between Indian law and customary law, particularly in the context of human rights situations, has been subject to re-examination. Indian courts have had to deal with



situations where human rights guarantee found in the constitution may not align with customary practices. In the case of *Shraya Bano vs Union of India*, it is a landmark case in which providing instant triple talaq by the husband was stated to be unconstitutional as it is violative of the fundamental rights of Muslim women. The Supreme Court held that such practices are not mentioned under the essential part of Islamic law, but are a customary practice followed by Muslims.

In the case of *Joseph Shine vs Union of India*, the Supreme Court struck down the provision stating that adultery is a crime. They stated that this provision treated women as property of their husbands, and it was a clear-cut violation of the fundamental rights of the wife. The ruling underlined the judiciary's commitment to revising long-standing practices that were discriminatory in contradiction to the principles of the constitution.

*Sabarimala Temple Case*, in this case, women of menstruating age were banned from entering the temple as a long-standing customary practice. The Supreme Court struck down such a provision by allowing the entry of women inside the temple, overruling such long-standing customary law. This case highlighted the issue of gender discrimination that happens in society in the form of customary practices.

These judgments show how the relationship between Indian law and customary law is dynamic and always changing, and it meets requirements for human rights standards and constitutional principles. This demonstrates a dedication to making sure that traditional customs do not infringe upon the fundamental rights that the Indian Constitution guarantees to every person. The merger of Indian formal legal systems and traditional norms creates a complex interaction between Indian laws and customary practices. India is a diverse nation with many different ethnic groups, cultures, and communities has its own unique set of traditions. Even though Indian laws are responsible for the legal framework in the country, customs intend to play an important role in framing such laws.

## **PRESERVATION**

India's cultural heritage is a kaleidoscope of colours, a symphony of languages, and a vibrant tapestry woven from the threads of diverse communities, religions, and customs that have flourished here for millennia. Preserving this magnificent legacy requires a multifaceted approach that involves the Indian government, educational institutions, and the very communities that embody these traditions. Governmental initiatives, such as the organisations

that support the performing arts, like Sangeet Natak Akademi, and the visual arts, such as Lalit Kala Akademi, are under the Ministry of Culture's jurisdiction. To support traditional art forms, these organisations host festivals, provide seminars, and award scholarships.

Interactive learning experiences can be the most effective way to incorporate cultural elements such as literature, history, and traditional art forms into school curricula, as opposed to taking a static approach. Teachers can help the next generation develop a greater respect for heritage by involving students in activities such as acting out archaeological digs, taking part in folk music workshops, or producing artwork influenced by local styles. This method encourages students to investigate historical narratives, philosophical ideas, and artistic expressions to develop a sense of cultural identity. It goes beyond simply having them memorise facts. Further ways to give students first-hand experiences that enhance classroom learning are to support cultural exchange programs, arrange school field trips to historical sites, and invite local artisans to give demonstrations in the classroom.

Religious Practices, Daily rituals and religious ceremonies associated with Hinduism, Buddhism, Jainism, Islam, Christianity, and other religions contribute significantly to preserving cultural identities. These practices encompass a wide range of activities, from attending puja ceremonies in Hindu temples to participating in Sufi saint worship practices or observing Ramadan traditions. Religious festivals are particularly important in keeping cultural traditions alive, as they involve elaborate preparations, specific rituals, and community gatherings that showcase traditional food, music, dance, and art forms.

Oral Traditions like Storytelling, folk songs, and knowledge passed down through generations ensure cultural practices and values remain vibrant within communities. These traditions encompass a wide range of topics, from religious epics like the Ramayana and Mahabharata to folktales that explain natural phenomena or social norms. Elders play a vital role in transmitting this knowledge to younger generations, ensuring the continuity of cultural heritage. In some communities, this transmission happens informally within family units, while others have established traditions like ballad singers or designated storytellers who perform at community gatherings.

India's rich heritage of handicrafts like pottery, weaving, and metalwork is kept alive by skilled artisans passing down their knowledge through family lineages or workshops. These crafts are often deeply embedded in the cultural identity of a particular region or community. For

example, the intricate zari embroidery of Banaras in Uttar Pradesh or the colourful silk weaving traditions of Kanchipuram in Tamil Nadu are not just sources of livelihood but also embody the artistic legacy and design sensibilities nurtured over generations.

The key is to adapt traditions to contemporary life while retaining their essence. India's contribution to cultural preservation is an ongoing process that requires continuous innovation and collaboration between government bodies, educational institutions, and the community at large. Despite these efforts, challenges like modernisation, urbanisation, and commercialisation can threaten traditional practices.

## CONCLUSION

In this research paper, we have discussed how Indian customs have influenced the development of the legal framework in the nation. Our primary attention was on the essential elements that provided legal recognition to these customs. Nevertheless, we also talked about how people's beliefs and faith are strengthened by these traditions. The legal framework of India is a remarkable mosaic made of alternating legal principles and historical customs. Deeply embedded in the social fabric, customs nevertheless have an impact on day-to-day existence. This research has emphasised the domains, such as marriage and inheritance laws, where customs and laws coexist harmoniously. It has, however, also identified areas of conflict, such as the conflict between traditional customs and individual rights, especially those of women.

Indian legal system faces challenges while navigating through this interplay, and at the same time, preserving cherished traditions and upholding universal principles of justice will be critical. For Example, the initiative taken by Nita Ambani to promote and preserve the rich heritage of India. She started a multiverse art centre, named NMACC (Nita Mukesh Ambani Cultural Centre), which aims at preserving "To celebrate and promote India's rich cultural heritage through various art forms". It is reasonable to say that India's legal system's future depends on its capacity to change and grow to preserve the rich tapestry of tradition and justice, so that they can thrive together in coordination with each other.

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